

# TRANSCRIPT OF PROCEEDINGS

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of:

Maritime Communications/Land Mobile, LLC

EB Docket No. 11-71

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NEAL R. GROSS & CO., INC.  
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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	) EB Docket No. 11-71
	)
MARITIME COMMUNICATIONS/LAND	) File No. EB-09-IH-1751
MOBILE, LLC	) FRN: 0013587779
	)
Participant in Auction No. 61 and	) Application File Nos.
Licensee of Various Authorizations in	) 0004030479, 0004144435
the Wireless Radio Services	) 0004193028, 0004193328
	) 0004354053, 0004309872
Applicant for Modification of Various	) 0004310060, 0004314903
Authorization in the Wireless Radio	) 0004315013, 0004430505
Services	) 0004417199, 0004419431
	) 0004422320, 0004422329
Applicant with ENCANA OIL AND GAS (USA),	) 0004507921, 0004153701
INC.; DUQUESNE LIGHT COMPANY, DCP	) 0004526264, 0004636537
MIDSTREAM, LP; JACKSON COUNTY	) and 0004604962
RURAL MEMBERSHIP ELECTRIC	)
COOPERATIVE; PUGET SOUND ENERGY,	)
INC.; ENBRIDGE ENERGY COMPANY,	)
INC.; INTERSTATE POWER AND LIGHT	)
COMPANY; WISCONSIN POWER AND	)
LIGHT COMPANY; DIXIE ELECTRIC	)
MEMBERSHIP CORPORATION, INC.;	)
ATLAS PIPELINE-MID CONTINENT, LLC.;	)
DENTON COUNTY ELECTRIC	)
COOPERATIVE, INC., DBA COSERV	)
ELECTRIC; AND SOUTHERN	)
CALIFORNIA REGIONAL RAIL	)
AUTHORITY	)
	)
For Commission Consent to the Assignment)	)
of Various Authorizations in Wireless	)
Radio Service	)

Tuesday,  
October 25, 2011  
Volume 2

Hearing Room A  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C.

The above-entitled matter came on for hearing, pursuant to  
notice, at 10:00 a.m.

BEFORE:

THE HONORABLE JUDGE RICHARD L. SIPPEL  
Chief Administrative Law Judge

## APPEARANCES:

On Behalf of the Federal Communications  
Commission:

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On Behalf of the Petitioners, Warren C. Havens;  
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and Monitoring Wireless, LLC.; Skybridge  
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On Behalf of the Applicants, Atlas Pipeline Mid-  
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1 P-R-O-C-E-E-D-I-N-G-S

2 (10:00 a.m.)

3 JUDGE SIPPEL: This is the  
4 conference in the maritime proceeding,  
5 Docket Number, EB Docket 11-71. It's the  
6 25th of October and this conference is being  
7 held pursuant to my order.

8 I'm going to be, what happened is  
9 I had my thoughts all outlined very clearly  
10 in a notebook, not in a notebook, rather,  
11 but a notepad, which I left dutifully on my  
12 kitchen table, so, and it wasn't because I  
13 got distracted by the game, I just forgot  
14 it.

15 So I'm going to start by taking -  
16 - let's get appearances on the record. This  
17 is quite a show this morning, but we've, we  
18 actually all have been together before. So  
19 let's start with the Bureau.

20 MS. KANE: Pamela Kane, for the  
21 Enforcement Bureau.

22 JUDGE SIPPEL: Okay, Ms. Kane.

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1 Good morning. And for Maritime.

2 MR. KELLER: Robert Keller and  
3 Craig Geno, bankruptcy counsel for Maritime  
4 Equipment as well.

5 JUDGE SIPPEL: Okay, what -- Mr.,  
6 I'm sorry, Geno?

7 MR. GENO: Geno, yes, sir. Good  
8 morning, Your Honor.

9 JUDGE SIPPEL: Good morning.  
10 What city or town or whatnot are you from?

11 MR. GENO: Jackson, Mississippi.

12 JUDGE SIPPEL: Jackson,  
13 Mississippi. Haven't had a lawyer from  
14 Jackson, Mississippi in I don't know how  
15 long. If you believe that. Okay, welcome.

16 MR. GENO: Thank you, Your Honor.

17 JUDGE SIPPEL: And for Havens?

18 MR. MCFADDEN: Good morning, Your  
19 Honor.

20 JUDGE SIPPEL: Mr.  
21 Havens?

22 MR. MCFADDEN: Good morning, Your  
Honor. Patrick McFadden.

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1 JUDGE SIPPEL: Mr. McFadden.

2 MR. MCFADDEN: Attorneys for  
3 SkyTel, and with me is Kristin Going.

4 JUDGE SIPPEL: Kristin Going?

5 MS. GOING: Yes, Your Honor.

6 JUDGE SIPPEL: Good morning,  
7 ma'am.

8 MS. GOING: Good morning.

9 JUDGE SIPPEL: Okay, and then,  
10 why don't we start, I guess with the order  
11 of the people, it it doesn't really make  
12 any difference, the particular order, the  
13 people who are seated, the applicant  
14 parties.

15 MR. RICHARDS: Your Honor, Jack  
16 Richards and Wes Wright from Keller and  
17 Heckman on behalf of Encana Oil and Gas,  
18 which is the first listed applicant. But if  
19 I may also, Atlas Pipeline-Mid Continent,  
20 LLC., Enbridge Energy Company, Inc., Jackson  
21 County Rural Electric Membership  
22 Corporation, and lastly, DCP Midstream, LP,

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1 which is a party, for the time being, that  
2 have a pending motion to withdraw.

3 JUDGE SIPPEL: Fine. Thank you.  
4 Thank you, sir. And who's the next on the  
5 list?

6 MR. PLACHE: Matthew Plache with  
7 Catalano & Plache, on behalf of Dixie  
8 Electric Membership Corporation.

9 JUDGE SIPPEL: And next?

10 MR. TURNER: Joshua Turner and  
11 Kurt DeSoto on behalf of Interstate Power  
12 and Light, and Wisconsin Power and Light.

13 JUDGE SIPPEL: And?

14 MR. SHELDON: Jeffrey Sheldon  
15 from Fish & Richardson on behalf of Puget  
16 Sound Energy.

17 JUDGE SIPPEL: Puget Sound  
18 Energy, good. And we have gotten Mr.  
19 Havens' representation. And next?

20 MR. ZDEBSKI: Good morning, Your  
21 Honor. Charlie Zdebski, on behalf of  
22 Duquesne Light Company.

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1 JUDGE SIPPEL: Thank you. And?

2 MR. COLE: Your Honor, I'm Harry  
3 Cole from Fletcher, Heald & Hildreth on  
4 behalf of Southern California Regional Rail  
5 Authority.

6 JUDGE SIPPEL: Mr. Cole, why  
7 didn't I recognize you?

8 MR. COLE: I kind of --

9 JUDGE SIPPEL: You probably don't  
10 recognize me anymore.

11 MR. COLE: The years must be the  
12 mileage, Your Honor.

13 JUDGE SIPPEL: On speaker phone?

14 MR. MILLER: Your Honor, it's  
15 Robert Miller and Richard Roberson on behalf  
16 of CoServ, and I appreciate your allowing us  
17 to participate in this matter.

18 JUDGE SIPPEL: Glad to have you  
19 this morning, Mr. Miller. Okay, that's --  
20 and you're representing who?

21 MR. MILLER: Denton County  
22 Electric Cooperative, Inc., d/b/a CoServ

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1 Electric.

2 JUDGE SIPPEL: Okay. Now,  
3 everybody here hears you, then. It's coming  
4 through loud and clear here on this end, and  
5 can you hear me okay?

6 MR. MILLER: We're doing fine,  
7 thank you very much.

8 JUDGE SIPPEL: Okay, let's --  
9 okay, let's hope it works throughout. We're  
10 pretty good at paying our electric bills  
11 here, I think. Okay. Let's hear first from  
12 the Bureau. We had status reports. They  
13 came from two -- they, well, actually two  
14 parties. The Bureau and Mr. Havens. We  
15 didn't hear from you, Mr. Keller.

16 MR. KELLER: There's nothing  
17 further to report, Your Honor. I mean, we  
18 left the status report on anything further  
19 that we wanted during discovery. We don't  
20 anticipate initiating more discovery, and we  
21 have nothing beyond the --

22 JUDGE SIPPEL: Is that the way I

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1 worded that order?

2 MR. KELLER: You said what she  
3 says in discovery and any other agenda item  
4 that you want to discuss in the conference.

5 JUDGE SIPPEL: Well, what the  
6 status of discovery would be, discovery has  
7 not moved or it's only moved, and why. But,  
8 I mean, I'm going to get that anyway.

9 I'm surprised that you read it  
10 that way. Let me see, order are the request  
11 to appear via telephone, no, that's not the  
12 one. We had you, Mr. Miller. Okay, or this  
13 is, this must be that been the order.  
14 September 26th order. Okay. Let me see.  
15 Pre-hearing conference was scheduled.  
16 Further ordered the agenda, talked about the  
17 status of bankruptcy proceeding. Doesn't  
18 have them there?

19 MR. KELLER: Well, if that's the  
20 agenda, we'll discuss then.

21 JUDGE SIPPEL: Oh, I'm sorry.

22 MR. KELLER: The last paragraph says

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1 it shall be --

2 JUDGE SIPPEL: I'm sorry. It shall  
3 be submitted as status report on one. Further  
4 discovery needed; and two, any agenda topics  
5 desired for conference -

6 (Simultaneous speaking.)

7 MR. KELLER: -- agenda topics other  
8 than the ones you've already set, which is the  
9 status of the bankruptcy and the progress in  
10 sales.

11 JUDGE SIPPEL: Well, maybe I'm losing  
12 my touch. I'm not going to beat up on that.  
13 I've got two up to date status reports and I'm  
14 set to go. So we know where you stand on  
15 discovery, Ms. Kane.

16 MS. KANE: Well, Your Honor, we've  
17 served discovery and --

18 JUDGE SIPPEL: Yes, I realize that.

19 MS. KANE: -- as we've outlined very  
20 carefully in our status report, we started  
21 serving discovery the day after the discovery  
22 period opened on July 6th. We served a set of

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1 interrogatories and a set of document requests.  
2 We have yet to receive responses to those. We  
3 have a second set outstanding, a second set of  
4 interrogatories and document requests, that we  
5 served on August 1st, Maritime has not responded  
6 to those. If you recall, Your Honor ordered  
7 them to produce and serve revised request for  
8 admissions responses on August 19th. We have  
9 not received those. So it's essentially as if  
10 discovery has not taken place at all. It hasn't  
11 even started in this case at this point. We  
12 have no further information from Maritime, or  
13 frankly, from the applicant parties than we had  
14 at the beginning of the status conference in  
15 June.

16 JUDGE SIPPEL: Now, I know what's  
17 hanging fire here is the Second Thursday issue,  
18 but why didn't you comply with my order to clean  
19 up those request submissions?

20 MR. KELLER: Well, I filed a pleading  
21 on that after they filed their motion to compel.  
22 I mean, we were waiting on a ruling on the

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1 motion for stay of all procedural dates,  
2 including discovery, and we felt that it's sort  
3 of moot to go through discovery when we're going  
4 to avoid the hearing due to Second Thursday.

5 JUDGE SIPPEL: Well, but that was  
6 the, really, the information that you entered,  
7 you've already given the information, it's just  
8 a question of cleaning it up. I mean, it really  
9 wasn't that burdensome, and I don't know why you  
10 think just filing a motion for relief on Second  
11 Thursday, a relatively broad motion on it, at  
12 that point, was good enough to, you know, clear  
13 the deck from at least that part of the  
14 discovery. I just don't understand that.

15 MR. KELLER: Well, we can go back and  
16 review that, Your Honor, but my point is, really

17 --

18 JUDGE SIPPEL: Yes, I --

19 MR. KELLER: We requested a deferral  
20 of all dates, in other words, the idea was to  
21 stop proceedings in the hearing, so that we  
22 could go ahead and concentrate on the Second

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1 Thursday.

2 JUDGE SIPPEL: Yes.

3 MR. KELLER: And discovery, you know,  
4 would take a lot of time, energy and money, you  
5 know, away from those efforts.

6 JUDGE SIPPEL: Well, I'm not talking  
7 about discovery in general. I'm talking --

8 MR. KELLER: I understand.

9 JUDGE SIPPEL: -- about only one  
10 aspect of it, which, where you had already  
11 responded to, it was just that it was, it was my  
12 determination from pleadings that were filed  
13 after that, that the answers that you gave were  
14 not adequate, and then bingo, nothing more. And  
15 I'm not going to, again, beat on this, but I  
16 wasn't happy with that development either.

17 I did not intend for all discovery to  
18 stop dead in the water, although I was, perhaps,  
19 not clear enough in terms of delineating what is  
20 going to be required to be done and what could  
21 be deferred. Because I understand the  
22 significance of your motion, and I don't intend

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1 to have any party do anything that's going to  
2 be, in the final analysis, a waste of time.

3 I'm just haven't reached that point  
4 yet, where I can be convinced of that. And I  
5 also mean that I have an obligation to rule on  
6 your Second Thursday motion. I mean the  
7 substantive merits on it.

8 MR. KELLER: Yes.

9 JUDGE SIPPEL: My job is to determine  
10 whether or not you've shown cause for delaying  
11 this proceeding. You can do what you want with  
12 the Second Thursday. And what I haven't seen, I  
13 haven't seen a clear delineation of facts that  
14 show that you're really in a position to get  
15 that relief.

16 For example, do you have any buyers  
17 lined up that are ready, willing and able to go  
18 forward? Number two, where do the applications  
19 of all these parties stand, with respect to  
20 that? You can't force them to assign their  
21 interests to someone else.

22 And that, alone, leads me to think

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1 that the issue is just not set to sit back and  
2 say, well we don't have anything more to do in  
3 this case, unless Maritime gets turned down by  
4 the Commission and has to come back. I'm not  
5 there yet. That's what I want to let you know  
6 that. I'm going to hear from you on this, but  
7 let me start with the Bureau.

8 MS. KANE: Well, Your Honor, at a  
9 minimum, we believe that we should be entitled  
10 to discovery that would be relevant to a Second  
11 Thursday analysis, much of which we've already  
12 asked for in our initial assessment and  
13 discovery.

14 Information relating to the actual  
15 contract and the value of the contracts between  
16 Maritime and the applicants, for example.

17 Any draft contracts that they may  
18 have entered into or negotiated, which would put  
19 a value on the spectrum at issue in this case.

20 Any valuation that they have of that  
21 spectrum or any evaluation they've made of that  
22 spectrum. All of this is relevant to a Second

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1 Thursday analysis.

2 In addition, there's a list now in  
3 the bankruptcy court of pages and pages of  
4 people that they identify as innocent creditors.  
5 We should be entitled to determine what the  
6 relationship is of those people to the alleged  
7 wrong-doers in this hearing.

8 And several of those are already  
9 covered by initial discovery that we asked for  
10 in July, several of those individuals.

11 Any documents that relate to the  
12 relationship between Mr. DePriest and Maritime  
13 to ascertain whether, in fact, he is an innocent  
14 creditor.

15 This is all discovery that is not  
16 only tantamount to the issue for us before this  
17 hearing, but are also necessary for a Second  
18 Thursday analysis that Maritime believes will be  
19 forthcoming. So at a minimum, we would ask for  
20 that discovery to move forward.

21 JUDGE SIPPEL: Well, let me, I --  
22 now, you've laid that out very clearly, but me

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1 just take it one step removed from that. What's  
2 your position with respect to the application of  
3 Second Thursday?

4 What do you submit is essential to  
5 show, is it a prima facie case that they can  
6 qualify for Second Thursday? Is there a  
7 reasonable belief of probability before you're  
8 prepared to argue that, well, now we should --  
9 we're not prepared to delay this case now, or,  
10 okay, they've made adequate showing. We agree,  
11 this case should be deferred until they get a  
12 ruling.

13 MS. KANE: Well, it's our understand,  
14 Your Honor, that Second Thursday is an exception  
15 to the long-standing Jefferson Radio policy, and  
16 that that exception is only put into play to  
17 balance the interest of innocent creditors  
18 against the interest of the Commission in  
19 determining to whom the licenses should be  
20 directed.

21 Once innocent creditors are paid from  
22 the value of Maritime's assets, it is the

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1 Bureau's position that any further assets, any  
2 further licenses should not be disposed of  
3 through a Second Thursday process, and that it  
4 will be inevitable that those licenses must be  
5 determined, the qualifications must be  
6 determined at a hearing.

7 The bankruptcy pleadings demonstrate  
8 that Maritime's proposed valuation of those  
9 licenses is nearly double what is necessary to  
10 pay the innocent creditors. And that was the  
11 argument we made in our supplemental briefing to  
12 Your Honor. At this point, you know, we've also  
13 obtained at least one of the contracts of the  
14 applicants that puts a more recent market value  
15 of the spectrum at issue in this case. And it's  
16 actually that spectrum is only four of 71  
17 licenses.

18 If you take the most liberal, lowest  
19 cost price that Maritime has put on that  
20 spectrum, which is .35 cents per megahertz per  
21 population, the value of just four of the  
22 licenses is estimated somewhere approximately

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1 about \$63 million, at a minimum, and at a  
2 maximum could be as high as \$85 million, so  
3 nearly four times the amount that would be owed  
4 to innocent creditors.

5 So it's the Bureau's position that,  
6 regardless of whether we have a Second Thursday  
7 analysis, and those innocent creditors are  
8 satisfied through that process, that there will  
9 be an extensive value of licenses left over  
10 that, by necessity, must be determined through  
11 this hearing process.

12 And so there's no purpose for staying  
13 the hearing, when inevitably, we will be here in  
14 any case.

15 JUDGE SIPPEL: Let me see if I  
16 understand exactly what you're saying. You're  
17 saying that there has to be a determination,  
18 now, now what about the, without getting into  
19 the precise merits of the case, that it's a  
20 false and misleading filing, et cetera.

21 But before we even stop this case  
22 from going forward, for consideration of Second

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1 Thursday, there has to be a value placed on, in  
2 other words, it has to be a realistic appraisal  
3 of the ability of Maritime to actually fulfill  
4 the obligations of one of the key conditions of  
5 Second Thursday, which is, for the purpose of  
6 making creditors whole, you have to have a  
7 realistic amount of money.

8 MS. KANE: We would agree with that,  
9 Your Honor. And, frankly, we've been raising  
10 this issue and, you know, through discovery, we  
11 had hoped to learn, at least, what the value of  
12 the contracts were that are already outstanding  
13 between Maritime and the applicants.

14 We know one of those contracts is \$7  
15 million, because the Metrolink SCRRA has  
16 provided that contract.

17 Maritime has not provided any of the  
18 other contracts, and, you know, for all we know,  
19 the value of those contracts alone exceeds the  
20 value that's owed to the innocent creditors.  
21 And --

22 JUDGE SIPPEL: So your question is

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1 that what happens to the balance?

2 MS. KANE: Yes, our question is what  
3 happens to the balance. And all we've ever  
4 heard from Maritime, is that they intend to  
5 transfer it as a restructuring of the company to  
6 some independent third party.

7 But it's our position, Your Honor,  
8 that, once they satisfy the innocent creditors,  
9 any further transactions are precluded by the  
10 long-standing Jefferson Radio policy. In other  
11 words, they can't use --

12 JUDGE SIPPEL: I just didn't know --  
13 no, go ahead.

14 MS. KANE: They can't use Second  
15 Thursday as a way to evade this hearing for the  
16 transactions for licenses that are not necessary  
17 to satisfy innocent creditors.

18 JUDGE SIPPEL: Okay. Let me hear --  
19 I'm going, Mr. McFadden, I'm going to get to you  
20 on this in just a minute. Let me hear, I'm  
21 interested in Mr. Keller's response to the last  
22 point that Ms. Kane made. What happens to the

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